Answer Outline
Question 1

1) Is Sue liable for Pam's actions of hiring Joyce and of signing the lease?
   a) Two potential means of vicarious liability

      i) If Sue and Pam are partners
      ii) If Pam acted within the scope of her actual or apparent authority as Sue's agent.

         (1) Partnership consists of two or more persons engaged in business for profit.
            (a) Sharing profits is evidence of a partnership
            (b) But receiving payment based on income does not alone create a partnership
            (c) A vendor is not a partner
            (d) Though payment based on revenue, Pam, whose business is consulting, seems more a vendor or a service provider than a partner
            (e) Unless agreed otherwise, partners have equal voice in management.
            (f) Whether or not a partnership exists is a factual determination by the court: may be evidence here to support either conclusion.

         (2) Partners jointly and severally liable for debts and obligations of the partnership
         (3) Partners have authority to incur obligations when acting within the scope of the partnership business
         (4) Pam's acts were within the scope of the business, so if there is a partnership, the partnership and therefore Sue, would be liable; actions within her apparent authority as a partner even if Sue did not agree.

   b) Sue's liability for Pam's actions as agent for Sue
      i) Actions must be within scope of actual or apparent authority
         (1) No actual authority as Sue told her not to commit without her approval
         (2) No authority initially to hire Joyce
         (3) Agent can not create own authority
         (4) Did Sue's participation in phone call create apparent authority?
            (a) Would reasonable person have construed Sue's words as suggesting Pam had authority?
            (b) Should Sue bear loss because she could have avoided problem by making Pam's lack of authority clear to Joyce?

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2) Pam's action in entering lease
            (a) Did Sue create apparent authority here as well?
            (b) Equal Dignities Rule
            (c) Authority must be in writing if contract within Statute of Frauds requiring contract in writing

3) Is Sue liable for Keith's breach of fiduciary duty?
    a) Was Keith a partner with Sue and maybe Pam?
    b) Creditor is not a partner.
    c) Was Keith's contribution a loan or a capital contribution ?
        i) No repayment terms discussed
    d) Creditor can become partner by assuming control of the business
    e) Was Keith's veto power sufficient?
    f) Also has interest in profits
    g) A partnership composed of individuals owing a fiduciary duty to a third party inherits that fiduciary duty.
    h) But where all members do not owe duty, the obligation is not assumed unless the other partners were aware of it and intended to conspire in breaching it.
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Answer Outline For Question 2

1) General Rule: Shareholders, directors and officers not personally liable for debts and obligations of a validly formed corporation.
   a) Corporate existence begins when Articles filed;
   b) Lucinda presented file-endorsed copy to the shareholders

2) Exceptions for Promoter liability Patty
   a) Agency law: Acting for non-existent principal
   b) Patty knows corporation not formed when she signs the contract.
   c) Corporation can not ratify because not in existence when contract entered; technically an assumption
   d) Corporate assumption doesn't release promoter without novation by creditor
   e) Should Seller be estopped from pursuing Patty because he understood that PBS not formed and he pressed for signed agreement?
   f) Model Act gives example as possible scenario for Corporation by Estoppel.

3) Exception for Watered Stock
   a) Par Value: Representation that stock will be issued for consideration of at least that amount.
   b) Concept abandoned by many jurisdictions
   c) Has stock been issued for valid consideration?
      i) Patty
         (1) Board discretion to value promoter services BJR
         (2) Note: not adequate consideration in some jurisdictions; could be watered stock for $50k liability; okay under the Model Act
      ii) Shawn: No problem; paid full par value
      iii) Buddy: Some jurisdictions don't recognize a promise of future services as adequate consideration.
      iv) Under Model Act any consideration determined adequate by the board is sufficient
      v) Dora has watered stock liability of $25k.

4) Exception where Court in equity denies corporate protection by piercing the corporate veil.
      i) Alter Ego from lack of formalities, mixing corporate and separate assets, lack of adequate capitalization; and
      ii) Court must pierce corporate veil to avoid fraud or injustice
      iii) Analysis: Formalities seem present. Is capitalization adequate and is failure to obtain the insurance an equitable factor requiring disregard of entity?
      iv) Is operating a dangerous business without insurance fraud or injustice?
      v) Distinguish between contract claim and tort claim
         (1) Seller of trucks could inquire as to financial status or impose covenants
         (2) Airport and Owner of Jet not voluntary encounter with PSB, piercing argument stronger there

5) Who is liable if veil pierced?
    a) Only those individuals with authority and control personally liable—not necessarily all shareholders. Shawn had responsibility, but others had knowledge and were directors; appointed her to handle.
    b) Treated as partners: joint and several liability
    c) Aunt Dora not liable if did not participate

6) Exception where shareholder directly responsible for tortious act or personally incurred liability.
    a) Buddy failed to train drivers properly

7) Fuel Order
    a) Agent liable to third party if no authority to enter transaction
    b) Secretary does not have inherent authority to obligate corporation
    c) Does Shawn handling insurance create apparent authority
        i) Maybe not; different vendors.
    d) No actual authority
    e) Shawn may be liable but not corporation and therefore not other shareholders if veil pierced

Answer Outline
Question 3

1) Removal of Louie from the Board
   a) Breach of the Management Agreement
      i) Is the Management Agreement an unenforceable voting trust?
      ii) A voting trust involves the separation of the voting rights from the beneficial stock ownership
      iii) Stock is transferred to a trustee who has the power to vote it
      iv) The corporation must be informed of the trust and the beneficiaries
      v) a voting trust may not last for more than 10 years
         (1) If it is a voting trust, it is invalid because it extends longer than 10 years
      vi) But there is no separation of voting and ownership rights; no transfer of stock to a trustee.
      vii) The agreement is one among shareholders concerning voting of their stock
      viii) Such voting agreements are enforceable even if entity is not a statutory close corporation
      ix) Louie may sue to have the agreement specifically enforced

   b) Louie could elect himself to the Board without the Management Agreement by using cumulative voting
      i) California law requires it
      ii) California law governs because of the internal affairs doctrine, which states governance of a corporation is determined by the law of the state of incorporation
      iii) Louie may cast 300 votes for himself or his nominee
      iv) The corporation must have at least 3 directors because it has 3 shareholders

   c) Removal of Louie improper
      i) May not remove a director without cause in a cumulative voting state if votes against would be sufficient to elect the director.
      ii) Louie has enough votes to elect himself and he objected
      iii) No charges or hearing for removal with cause

2) Hiring David and Conrad
   a) Shareholders of a closely held corporation owe each other same fiduciary duties as members of a partnership
   b) Closely held company is one where small number of shareholders with no readily available market for the stock
   c) Consulting arrangement bestows a benefit on David and Conrad that Louie does not receive
   d) Classic attempt to freeze out Louie
   e) Arrangement may be invalid or Louie should receive the same opportunity to benefit
   f) Also a self dealing transaction for David and Conrad
   g) Not entitled to BJR protection

3) Quasi Preemptive Rights
    a) Louie should have the right to protect his proportionate interest in the company under same fiduciary theories or invalidate options of David and Conrad

4) Oppression by David and Louie may be grounds for involuntary dissolution of the corporation

5) Potential Liability of David, Conrad and Erik for safety violation
    a) Directors owe the corporation and its shareholders fiduciary duties of care and loyalty
    b) BJR: framed different ways, but generally requires that Directors must use same care a reasonable person would in similar circumstances, though the standard announced in many judicial decisions is that Directors are not liable unless they are grossly negligent.
    c) The BJR protects Directors entitled to its protection from judicial second guessing
    d) As shown in the Caremark case, directors should take action to inform themselves and to see that reasonable monitoring and reporting systems are in place.
    e) The three directors made no attempt here to investigate after being informed a problem may exist; they ignored the issue without investigation
    f) The directors also took no steps to inform themselves
    g) But are the directors shielded from liability by the exculpation clause in the Bylaws?
        i) No liability for breach of fiduciary duty of care
    h) Can not remove liability for breach of duty of loyalty

Does their intentional disregard of Eileen's warning amount to breach of duty of loyalty?